

### REMARKS

Claim 1 has been amended. Thus, claims 1, 5, 8-17, 19 and 20 are pending in the present application. Support for the amendment to claim 1 may be found in the specification as originally filed at page 7, line 12 to page 8, line 4, and in Figures 1a, 1b and 2a-c.

It is clear from page 7, lines 12-15 and Figs. 2a-c that the grub screw is located in hole 22, which is located towards the inner end of the bracket. Page 7, lines 24-25 states that the position of the support element is fixed by "...tightening the grub screw in the support element 9 against the support post 1. The grub screw applies pressure to, for example, an inner wall of the groove 3." When this statement is considered in view of the bracket shown in Figures 2a-c and the cross-section of the support post shown in Figures 1a-b, it is clear that the inner face of the groove must be the face of the groove opposite the mouth 8. The orientation of hole 22, together with the profile of the groove and that part of the bracket that fits into the groove, will not allow it to be any other face. In particular, Figure 2b shows that the hole 22, and hence the grub screw, is positioned centrally and is also centrally aligned (also see dotted lines in Figure 2a).

In addition, page 7, lines 25-27 states that, "The grub screw applies a moment to the connector element 15 such that its upper end applies a pressure to the inner wall and its lower end to the groove lips 7..." (emphasis added). Since the part of the bracket that pushes against the lips 7 is located in the groove 3, it must push against the inner face of the lips. Thus, no new matter has been added.

Reconsideration and withdrawal of the present rejections in view of the amendments and comments presented herein are respectfully requested.

#### **Rejection under 35 U.S.C. §103(a)**

Claims 1, 3-15, 19-23, 26-31, 33 and 35 were rejected under 35 U.S.C. §103(a) as being unpatentable over Frascaroli et al.(US 5,715,760) in view of Towfigh (US 5,531,168). The Examiner alleges that Frascaroli teaches the invention substantially as claimed, the only difference being that the locking means is not located towards the lower end of the second locating formation. The Examiner then states that it would have been obvious to modify the structure of Frascaroli to include the locking means towards a lower end of the locating means as taught by Towfigh, since such structures are conventional alternative structures used for the same purpose. However, as explained below, this combination of references would not render the claimed invention obvious.

Establishing *prima facie* obviousness requires a showing that each claim element is taught or suggested by the prior art. See *In re Royka*, 490 F.2d 981, 180 USPQ 580. (CCPA 1974). Specifically, establishing *prima facie* obviousness requires a showing that some combination of objective teachings in the art and/or knowledge available to one of skill in the art would have lead that individual to arrive at the claimed invention. See *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Moreover, establishing *prima facie* obviousness requires not only a showing that such a combination of prior art teachings is possible, but also that the teachings would have 1) motivated the skilled artisan to make the combination to arrive at the claimed invention, and 2) suggested to the skilled artisan a reasonable likelihood of success in making and using the claimed invention. See *In re Dow Chem. Co.*, 837 F.2d 469, 473 (Fed. Cir.1988). Absent a showing of such motivation and suggestion, *prima facie* obviousness is not established. See *Fine*, 5 USPQ2d at 12598. The USPTO has acknowledged that the recent decision by the Supreme Court in *KSR Int'l. Co v. Teleflex Inc.*, No. 04-1350 (April 30, 2007) did not eliminate this requirement. In a Memorandum dated May 3, 2007 sent to Technology Center Directors, Margaret A. Focarino, Deputy Commissioner for Patent Operations, concluded that "in formulating a rejection under 35 U.S.C. § 103(a) based upon a combination of prior elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed." In the case of the present rejection, no such reason is present.

Claim 1 as amended recites that the locking means is constructed and arranged for compressive engagement with the channel body on a face opposite the mouth, thereby causing in use, the lower end of the second locating formation to be forced against the inner face of the lips. Neither reference cited by the Examiner discloses or suggests these features.

The locking means disclosed by Frascaroli does not engage the channel body. Instead, the locking means is a clamping arrangement wherein the lips of the channel body are clamped between a trapezoidal engagement element 24 and a bracket 37a. The screw 25 pulls the engagement element 24 towards the bracket 37a when tightened. Hence, the screw 25 is in tension (see column 4, lines 21-32). Thus Frascaroli does not disclose or suggest a locking means of the type claimed, nor is it located towards the lower end of the locating formation.

Towfigh discloses an adjustable shelf unit that uses a similar type of tensile locking means to Frascaroli (see Figure 2 and column 4, lines 23-34). Rotating knob 40 causes it to

compress flanges 45 between the knob 40 and the proximal end 36 of a threaded bolt 38. The threaded bolt 38 is in tension and 38 does not apply a compressive load to the face of the channel opposite the lips. Thus, the locking means of Towfigh is also based on a clamping arrangement.

Accordingly there are structural differences between the claimed invention and the inventions of Towfigh and Frascaroli. Since both of cited references disclose locking means of the clamping type, the combination of these references does not create a *prima facie* showing of obviousness since a claim element is missing from these teachings.

In addition, one of ordinary skill in the art would not be motivated to modify the clamping arrangement type of locking means disclosed by these references to arrive at the claimed compressive engagement-type locking means because nothing in either of the references provides any suggestion or motivation to make such a modification.

Moreover, nothing in these references would suggest the significant unexpected advantage of the presently claimed invention. This unexpected advantage is further evidence of the nonobviousness of the claims, which would rebut a *prima facie* showing of obviousness, even had such a showing been set forth. In particular, one significant unexpected advantage of the claimed invention is that the direct contact of the locking means on the face of the channel body opposite the lips causes the lower end of the first locating formation to be pushed away from the channel face opposite the lips and to be forced against the inner surface of the lips (specification at page 7, line 12 to page 8, line 4). These outwardly directed forces of the screw element and lower end of the bracket provide a very strong locking arrangement because the lower part of the first locating formation pivots about the upper part to effectively wedge the bracket within the channel thereby significantly increasing the frictional resistance between them. This occurs because the locking means is located towards the lower end of the bracket. In addition, when a load is applied to a work surface attached to the bracket, the turning moment causes the compressive force of the screw element on the channel body to increase thereby increasing the resistance to slip. This advantage of the claimed locking means could not have been predicted based on the cited references.

In view of the amendments and comments presented above, Applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §103(a).

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### CONCLUSION

Applicants submit that all claims are in condition for immediate allowance. Should there be any questions concerning this application, the Examiner is respectfully invited to contact the undersigned at the telephone number appearing below. Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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